



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2012 REGULAR SESSION

HOUSE BILL NO. 400

THURSDAY, FEBRUARY 23, 2012

The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED
DATE April 4, 2012
3:10pm
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY Kim Perry

1 AN ACT relating to economic development.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔ Section 1. KRS 154.25-010 is amended to read as follows:

4 As used in this subchapter, unless the context clearly indicates otherwise:

5 (1) "Activation date" means a date selected by an approved company and set forth in
6 the jobs retention agreement at any time within a three (3) year period after the date
7 of final approval of the agreement by the authority upon which the required
8 investment shall be made and the jobs retention project completed;

9 (2) "Agreement" means a jobs retention agreement entered into pursuant to KRS
10 154.25-030 on behalf of the authority and an approved company with respect to a
11 jobs retention project;

12 (3) "Approved company" means any eligible company approved by the authority
13 pursuant to KRS 154.25-030 for a jobs retention project;

14 (4) "Approved costs" means that portion of the eligible costs approved by the authority
15 that an approved company may recover through the inducements authorized by KRS
16 154.25-030, being a percentage of eligible costs as approved by the authority;

17 (5) "Assessment" means the wage assessment fee authorized by KRS 154.25-040;

18 (6) "Authority" means the Kentucky Economic Development Finance Authority created
19 by KRS 154.20-010;

20 (7) "Commonwealth" means the Commonwealth of Kentucky;

21 (8) "Eligible company" means any corporation, limited liability company, partnership,
22 limited partnership, sole proprietorship, business trust, or any other entity
23 designated by the United States Department of Commerce, United States Census
24 Bureau North American Industry Classification System Code of 325211, 325510,
25 326199, 327211, 327212, 327215, 331111, 331221, 331521, 332312, 332813,
26 33299, 335110, 335911, 335912, 336211, 336111, 336112, ~~{or}~~ 336120, 423510,
27 493110, 541614, 551114, or 561439, that ~~is within the jurisdiction of a~~

1 ~~consolidated local government containing a city of the first class,~~ employs a
 2 minimum of one thousand (1,000) full-time persons engaged in automobile or
 3 automobile parts or supplies manufacturing, has been operating within the
 4 Commonwealth on a continuous basis for at least five (5) years preceding the
 5 request for approval by the authority of the project which meets the standards set
 6 forth in KRS 154.25-020, and that has been previously approved for economic
 7 development incentives from the Commonwealth related to one (1) or more of its
 8 facilities;

9 (9) "Eligible costs" means:

10 (a) Obligations incurred for labor and to vendors, contractors, subcontractors,
 11 builders, suppliers, deliverymen, and materialmen in connection with the
 12 acquisition, construction, equipping, rehabilitation, and installation of a jobs
 13 retention project;

14 (b) The cost of contract bonds and of insurance of all kinds that may be required
 15 or necessary during the course of a jobs retention project which is not paid by
 16 the vendor, supplier, deliveryman, contractor, or otherwise provided;

17 (c) All costs of architectural and engineering services, including estimates, plans
 18 and specifications, preliminary investigations, and supervision of construction,
 19 rehabilitation, and installation, as well as for the performance of all the duties
 20 required by or consequent upon the acquisition, construction, equipping,
 21 rehabilitation, and installation of a jobs retention project;

22 (d) All costs required to be paid under the terms of any contract for the
 23 acquisition, construction, equipping, rehabilitation, and installation of a jobs
 24 retention project;

25 (e) All costs required for the installation of utilities, including but not limited to
 26 water, sewer, sewer treatment, gas, electricity, communications, and railroads,
 27 and including off-site construction of the facilities paid for by the approved

1 company; and

2 (f) All other costs comparable with those described above;

3 (10) "Final approval" means the action taken by the authority authorizing the eligible
4 company to receive inducements under this subchapter;

5 (11) "Inducements" means the Kentucky tax credit and the wage assessment fee as
6 prescribed in KRS 154.25-030 and 154.25-040;

7 (12) "Jobs retention project" or "project" means the acquisition, construction, and
8 installation of new equipment and, with respect thereto, the construction,
9 rehabilitation, and installation of improvements to facilities necessary to house the
10 acquisition, construction, and installation of new equipment, including surveys;
11 installation of utilities, including water, sewer, sewage treatment, gas, electricity,
12 communications, and similar facilities; off-site construction of utility extensions to
13 the boundaries of the real estate on which the facilities are located; and shall contain
14 eligible costs of not less than one hundred million dollars (\$100,000,000), all of
15 which are utilized to improve the economic and operational situation of an
16 approved company to allow the approved company to reinvest in its operations and
17 retain a significant number of existing jobs within the Commonwealth;

18 (13) "Kentucky gross profits" means Kentucky gross profits as defined in KRS
19 141.0401;

20 (14) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS
21 141.0401;

22 (15) "Manufacturing" means any activity involving the manufacturing, processing,
23 assembling, or production of any property, including the processing that results in a
24 change in the condition of the property and any related activity or function, together
25 with the storage, warehousing, distribution, and related office facilities;

26 (16) "Preliminary approval" means the action taken by the authority conditioning final
27 approval by the authority upon satisfaction by the eligible company of the

requirements under this subchapter;

(17) "Supplemental project" means an additional~~[a second]~~ jobs retention project proposed by the approved company or its affiliate during the term of a previously approved jobs retention project which may be included in the jobs retention agreement by way of amendment and which may result in increased inducements and an extension of the original project term as set forth in Section 3 of this Act; and

(18) "Transferred credits" means unused approved costs as determined by the Department of Revenue from a previously approved, independent, active project under a different incentive program governed by the Cabinet for Economic Development that may be transferred to a jobs retention project and used by the approved company pursuant to a jobs retention agreement.

➔Section 2. KRS 154.25-030 is amended to read as follows:

(1) The authority, upon adoption of its final approval, may enter into, with any approved company, an agreement with respect to the jobs retention project. The terms and provisions of each agreement, including the amount of approved costs, the amount of the inducement, the job maintenance requirement, and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(a) The amount the approved company may recover through inducements under this subchapter for the initial project, which shall be a negotiated percentage not to exceed fifty percent (50%) of eligible~~[approved]~~ costs. However, the authority may negotiate an increase in the percentage such that both the initial project and any~~[the]~~ supplemental projects~~[project]~~ are eligible for seventy-five percent (75%) of eligible~~[approved]~~ costs upon approval of a supplemental project. The adjustment to the initial project shall be made on

1 the total approved costs and any credits taken prior to the addition of a
2 supplemental project shall then be subtracted from that increased amount of
3 approved costs. Neither the initial project nor any~~[the]~~ supplemental project
4 shall ever be eligible for inducements greater than seventy-five percent (75%)
5 of the eligible~~[approved]~~ costs. The authority shall negotiate a maximum
6 allowable inducement for each year of the agreement, and the approved
7 company may not recover inducements above that maximum in any year
8 during the term of the agreement, except that the annual maximum allowable
9 inducement may be exceeded if a carry-forward of unused inducements from
10 previous years exists. Any carry-forward of unused inducements will lapse
11 upon maturity or termination of the agreement;

12 (b) A provision that sets the activation date for the initial project within three (3)
13 years of the final approval. Prior to the activation date, the authority may
14 extend the time for the completion of the jobs retention project and
15 compliance with the required investment upon request of the approved
16 company for good cause; however, the ten (10) year period for the term of the
17 agreement shall begin from the activation date. No inducements from the jobs
18 retention project shall be available, other than the transferred credits provided
19 for under subsection (2) of this section, until activation. Upon activation, the
20 balance of transferred credits shall expire;

21 (c) A provision that states that within three (3) months of the completion of the
22 jobs retention project, the approved company shall document the actual cost of
23 the project in a manner acceptable to the authority. The authority may employ
24 an independent consultant or utilize technical resources to verify the cost of
25 the project. The approved company shall reimburse the authority for the cost
26 of the consultant;

27 (d) A provision that establishes a minimum required number of full-time jobs that

1 must be maintained at the site of the jobs retention project and filled with
 2 residents of the Commonwealth subject to Kentucky income tax and states
 3 that the authorized inducements may be suspended at the discretion of the
 4 authority from the date of noncompliance until the date compliance is
 5 reestablished if the approved company's employment falls below the
 6 established minimum employment requirement. If the company does not
 7 increase the number of full-time employees at the site who are residents of the
 8 Commonwealth and subject to Kentucky income tax sufficiently to meet the
 9 minimum employment requirement within one (1) year from the date of the
 10 initial suspension, the remaining unused inducements may be terminated at
 11 the discretion of the authority;

12 (e) A provision that gives the authority discretion to suspend or terminate the
 13 authorized inducements for any failure to comply with the terms of the
 14 agreement; and

15 (f) A provision that provides the term shall not be longer than the earlier of:

16 1. The date on which the approved company has received inducements or
 17 withheld assessments equal to the amount that the company may recover
 18 under paragraph (a) of this subsection; or

19 2. Ten (10) years from the activation date.

20 However, the term may be extended to a period longer than ten (10) years
 21 upon the addition of a supplemental project as negotiated and approved by the
 22 authority.

23 (2) In consideration of the execution of the agreement, during the time the agreement is
 24 in effect, which time shall commence on the date of the agreement, the approved
 25 company may be permitted the following inducements:

26 (a) Beginning on the effective date of the jobs retention agreement, which shall
 27 also be the date of final approval, if the approved company has a balance of

1 unused approved costs on a previously existing and active incentive
 2 agreement approved by the authority pursuant to ~~Subchapter 24 or 28 of~~
 3 KRS Chapter 154, the approved company may impose wage assessments on
 4 employees whose jobs are at the facility where the project defined in the
 5 previously existing incentive agreement was located. The wage assessments
 6 may be imposed as provided in KRS 154.25-040, and shall be available in an
 7 amount up to the balance of transferred credits from the previously existing
 8 project.

9 1. The transferred credits shall only be available to the approved company
 10 until the activation date, the term from the original incentive agreement
 11 expires, or the balance of transferred credits is exhausted, whichever
 12 occurs first; and

13 2. Should the approved company exercise this option, the incentive
 14 agreement from which the credits were transferred shall be terminated
 15 upon transfer and all parties shall be released from their obligations
 16 thereunder.

17 (b) After the activation date:

18 1. A one hundred percent (100%) credit against the taxes imposed by KRS
 19 141.020, 141.040, and 141.0401 that would otherwise be owed by the
 20 approved company, in the approved company's taxable year, as
 21 determined under KRS 141.402, on the taxable income, Kentucky gross
 22 receipts, or Kentucky gross profits of the approved company generated
 23 by or arising from the jobs retention project. The ordering of credits
 24 shall be as provided in KRS 141.0205;

25 2. The aggregate assessment withheld by the approved company as
 26 provided in KRS 154.25-040 in each year after the activation date;

27 (c) The tax credits allowed to the approved company shall be equal to the lesser

1 of the total amount of the tax liability or the amount that the company may
2 recover under subsection (1)(a) of this section that has not yet been recovered,
3 reduced by any recovery through the collection of assessments subject to the
4 annual maximum inducements authorized pursuant to subsection (1)(a) of this
5 section. The credit shall be allowed for each taxable year of the approved
6 company during the term of the agreement and for which a tax return of the
7 approved company is filed until the amount that the company may recover
8 under subsection(1)(a) of this section has been received through a
9 combination of credits and assessments, if the company elects to impose
10 assessments. The approved company shall not be required to pay estimated tax
11 payments as prescribed under KRS 141.044 or 141.305 on income, Kentucky
12 gross profits, or Kentucky gross receipts from the jobs retention project. One
13 hundred eighty (180) days after the filing of the tax return of the approved
14 company, the Department of Revenue shall certify to the authority the state
15 tax liability for the preceding taxable year of the approved company and the
16 amount of any tax credits taken pursuant to this section;

17 (d) Prior to execution of the agreement, the eligible company shall secure from all
18 local governmental authorities responsible for collecting local occupational
19 license fees a resolution or order of the local governmental entities
20 acknowledging and consenting to the termination or partial termination of the
21 receipt of local occupational license fees on wages subject to the agreement
22 paid by the approved company on behalf of its employees to the local
23 government entities;

24 (e) If more than one (1) local occupational license fee is imposed upon the
25 employees of the approved company, the assessment imposed upon the
26 employees shall be credited against the local occupational license fee and shall
27 be apportioned to each local occupational license fee according to each local

occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit or portion thereof shall be allowed against any local occupational license fee imposed by or dedicated solely to a local board of education; and

(f) If, in any taxable year of the approved company during which the agreement is in effect, the assessment collected from the wages of the employees exceeds the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection, or exceeds the annual maximum negotiated by the authority, the assessment collected from the wages of the employees shall cease for the remainder of that taxable year of the approved company. The approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that taxable year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

(3) The jobs retention agreement and inducements available pursuant thereto shall not be transferable or assignable by the approved company without the expressed written consent of the authority.

➔ Section 3. KRS 154.25-050 is amended to read as follows:

(1) If an approved company makes~~[an]~~ additional investments~~[investment]~~ in the form of additional~~[a second]~~ jobs retention projects~~[project within the jurisdiction of the same consolidated local government containing a city of the first class]~~ during the term of the initial jobs retention project, the approved company may apply for, and the authority may approve, a supplemental project.

(2) The authority, upon adoption of its final approval of a supplemental project, may

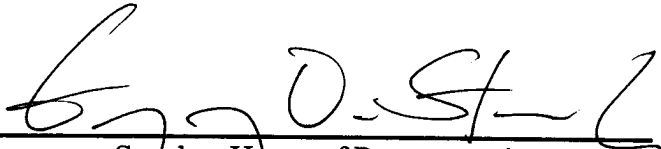
enter into, with any approved company, an amended agreement with respect to both the initial jobs retention project and the supplemental project which shall jointly make up its project. The terms and provisions of each amended agreement, including the amount of approved costs, the amount of the tax credit pursuant to KRS 154.25-030, the job maintenance requirement established by the agreement, and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

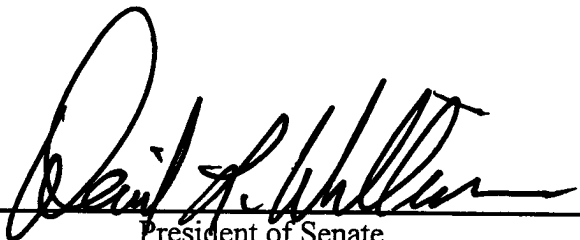
(a) Upon approval of a supplemental project, the amount the approved company may recover through inducements for the initial project and any supplemental~~both~~ projects shall be a negotiated percentage not to exceed seventy-five percent (75%) of the eligible~~balance of approved~~ costs from the initial project and all newly incurred eligible~~approved~~ costs from any~~the~~ supplemental projects~~project~~, subject to the annual maximum negotiated and approved by the authority. At the time a~~the~~ supplemental project is approved, the recoverable amount and the annual maximum inducement for~~on~~ the initial jobs retention project and any previous supplemental projects may also be increased at the discretion of the authority pursuant to KRS 154.25-030.

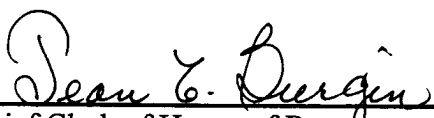
(b) The activation date for a~~the~~ supplemental project shall be no more than three (3) years from final approval of the supplemental project. Prior to the activation date, the authority may extend the time for the completion of the jobs retention project and compliance with the required investment upon request of the approved company for good cause; however, the ten (10) year period for the term of the agreement shall begin from the activation date. Within three (3) months of the completion date for a~~the~~ supplemental project, the approved company shall document the actual cost of the project in

1 a manner acceptable to the authority. The authority may employ an
2 independent consultant to verify the cost of the supplemental project subject
3 to reimbursement for the cost of same from the approved company.

4 (c) In consideration of the execution of the amended agreement, on the date stated
5 in the agreement, the approved company may be permitted during the term of
6 the amended agreement to take the inducements set forth in KRS 154.25-
7 030(2)(b) and (2)(c), subject to the remaining terms of that section.


Speaker-House of Representatives


President of Senate

Attest: 
Chief Clerk of House of Representatives

Approved 
Governor

Date 4-4-12